

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:

**Arthur W. Reveal and
Theresa B Reveal,**

Bankruptcy Case No.: 07-81752

Soc. Sec. Nos. xxx-xx-7143 & xxx-xx-5270
Mailing Address: 5223 Oakbrook Drive, , Durham,
NC 27713-

Debtors.

**Arthur W. Reveal and
Theresa B Reveal,**

A.P. No.: _____

Plaintiffs,

Beneficial Mortgage Company of NC,

Defendant.

COMPLAINT TO VALUE COLLATERAL

The Plaintiffs, above-named, respectfully allege as follows:

1. That this matter is a core proceeding pursuant to 28 U.S.C. § 157, and that the court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157 and 1334.
2. This Complaint was filed, pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c), and in accordance with Bankruptcy Rule 7001, to value their residence for the purpose of determining the secured status of the mortgage claim held by Beneficial Mortgage Company of NC.
3. The Plaintiffs are filed this bankruptcy case on November 30, 2007, seeking protection under Chapter 13 of Title 11 of the United States Code.
4. The Defendant Beneficial Mortgage Company of NC is a corporation and/or a partnership with an office and principal place of business located at 961 Weigel Drive, , Elmhurst, IL 60126. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c).
5. The Plaintiffs own real property located at 5223 Oakbrook Drive Durham NC 27713. The legal description of the property is as follows:

ALL THAT CERTAIN PROPERTY SITUATED IN THE TOWNSHIP OF CITY-OUT IN
THE COUNTY OF DURHAM AND STATE OF NORTH CAROLINA, BEING MORE

FULLY DESCRIBED IN DEED DATED 01/27/2006 AND RECORDED 01/31/2006, AMONG THE LAND RECORDS OF THE COUNTY AND STATE SET FORTH ABOVE, IN DEED VOLUME 2100 AND PAGE 478. The tax map or parcel ID No. is: 145131

6. Beneficial Mortgage of North Carolina holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$287,168.41. This Deed of Trust was recorded on February 9, 2006, in Book 5110 at Page 734, Durham County Registry of Deeds.
7. Beneficial Mortgage Company of NC holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$12,896.47. This Deed of Trust was recorded on September 22, 2006, in Book 5364 at Page 452, Durham County Registry of Deeds.
8. The fair market value of the said property is not greater than \$266,577.00.
9. Pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c) of the Bankruptcy Code and In re: Kidd, 161 B.R. 769 (Bankr. E.D.N.C. 1993), the loan with Beneficial Mortgage Company of NC, secured by a second Deed of Trust against the Plaintiffs' said property, is an unsecured claim. In turn, pursuant to 11 U.S.C. § 506(d), the lien securing said loan is void.
10. The Deed of Trust held and/or serviced by the Defendant takes an additional security interest in, among other personal property, the Plaintiffs' escrow account.
11. Pursuant to In re Bradsher, 2010 WL 545967 (Bankr. M.D.N.C. February 16, 2010), such additional collateral renders 11 U.S.C. § 1322(b)(2) inapplicable.

WHEREFORE, the Plaintiffs pray the Court find that said claim held by Beneficial Mortgage Company of NC, which is secured by a second Deed of Trust upon said property, to be wholly unsecured, and that said claim should therefore be classified an unsecured claim for the purpose of this Chapter 13 case. The Plaintiffs further pray that the Court order Beneficial Mortgage Company of NC to cancel the said Deed of Trust forthwith upon the completion of the Plaintiffs' Chapter 13 plan and the granting of the Plaintiffs' discharge, and that the Court grant such other and further relief as to the Court seems just and proper.

Dated: April 8, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz
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